

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA-2004-18746

UNION PACIFIC RAILROAD COMPANY –
PETITION FOR WAIVER

COMMENTS
OF
TRANSPORTACION FERROVIARIA MEXICANA ("TFM")

Transportacion Ferroviaria Mexicana ("TFM") is filing these Comments in order to respond to certain statements made at the October 1, 2004 public hearing.

1. **TFM responses to comments of Mr. Terry Briggs – BLET.**

Page 2, paragraph 2 (general) – We share Mr. Briggs' concerns about safety. TFM is and always will be as concerned as anyone else about the safety of our employees, the general public, and the countries we serve. We believe that the requested waiver will not compromise safety in any way.

Page 2, paragraph 2 (Language and technical/regulatory barriers) – Mr. Briggs claims that, based on his review of the Spanish versions of 49 CFR Parts 232, 215, 229, and 231 provided with the waiver petition, we have not provided "direct" translations of the regulations. What he fails to understand is that literal, word-for-word translations cannot be made without compromising the integrity and intent of the regulations. The differences between English and Spanish languages are not simply a matter of different words. Sentences are also constructed differently. A literal, word-for-word translation of English to Spanish, such as Mr. Briggs would like to see, would be extremely difficult for a Spanish speaking reader to understand. Further, English railroad terms often have little semblance to Spanish railroad terms in a word-for-word translation. To deal with this issue, we have U.S. and Mexican railroad personnel who are fluent in both English and Spanish and review Spanish translations of U.S. railroad rules for accuracy, to ensure that the intended meaning of the U.S. rules comes across in a clear manner.

Page 3, paragraph 1 (Language and technical/regulatory barriers) – As for Mr. Briggs' other observations regarding the translations, I have reviewed the Spanish versions of the CFR rules provided with the waiver, and determined that incomplete or draft files were inadvertently mixed in with this material. New files will be sent to FRA

electronically and hard copy in a separate filing, which should address the concerns raised by Mr. Briggs.

Page 3, paragraph 2 (Language and technical/regulatory barriers) – Mr. Briggs' comments on the separate press releases issued by KCS and Grupo TMM in April, 2004 illustrate why one language cannot simply be translated, word-for-word, into another. To avoid problems like this, we have our translations of U.S. railroad rules reviewed by railroad personnel who are fluent in both English and Spanish. As such, there should be no "*misunderstanding*" of how to perform our air brake test. Further, we do not rely solely on the translated rules to tell our people what to do. During training sessions, our personnel are provided training in a written, visual and verbal manner, which minimizes the possibility of misunderstanding any regulation. We also provide our employees with printed guidelines, which are a summary of the key things they should know and do in the performance of their respective duties.

Page 4, paragraph 3 (Language and technical/regulatory barriers) – Mr. Briggs is correct that the U.S. and Mexico use different units of measure. However, this is not unlike the same situation that exists between the U.S. and Canada. Furthermore, for over one hundred (100) years, the employees of the Mexican railroad industry have been operating with countless U.S. measurements and continue to do so to this very day. Mechanical, engineering, and transportation measurement standards are, more often than not, expressed in U.S. units.

Page 5, paragraph 1 (Accountability) – Mr. Briggs' concerns regarding accountability and whether TFM will voluntarily comply with FRA requirements are totally unfounded. We comply with all applicable FRA standards on a daily basis and voluntarily do so with regard to many that do not directly or indirectly apply to us. We have done so since the start up of operations, almost eight (8) years ago. In this case, we would obviously comply with FRA requirements, since the last thing we want is to perform in an unsafe or unsatisfactory manner and have FRA exercise its right to revoke the waiver.

Page 5, paragraph 1 (Accountability) – Mr. Briggs' concerns regarding the location(s) where the applicable records will be kept were fully addressed at the public hearing and in the waiver petition. FRA will have access to TFM records both in Mexico and at a location in the United States agreed upon with FRA. FRA has already conducted one audit of the records, had ready access to them, and found them to be in order.

Page 6, paragraph 2 (There is no need for this drastic action) – Mr. Briggs' assertions that the locomotives used to deliver trains "*generally*" return to the U.S. in less than 24 hours is correct. However, as he states, that is "*generally*" the case. Therefore, since it is not the case 100% of the time, we have taken the necessary steps to ensure that our Mechanical and Transportation department personnel have been trained in the manner required to correctly perform daily locomotive inspections, as outlined in 49 CFR Part 229.

Page 6, paragraph 3 (There is no need for this drastic action) – Mr. Briggs' statement regarding the "elimination of the train air brake and mechanical inspections" mischaracterizes the waiver request. There will not be any elimination of the required inspections. What is being sought, is FRA's acceptance of perfectly safe and well performed Class I brake and mechanical inspections by TFM personnel, in order that our U.S. interchange partner does not have to conduct the same inspections a few miles north of where the interchange was performed, not the elimination of any required inspection.

Page 6, paragraph 4 (The preeminent issue of our time – security) – Mr. Briggs' is obviously not very familiar with our operations. We know of no other North American interchange location, national or international, which has worked harder on security measures and invested the necessary funds, than has been done at the International Gateway at Laredo, Texas. Furthermore, as we have tried to make clear on countless occasions, we are not the old FNM. We are TFM, a truly international railroad, who happens to interchange some of the highest volumes of railroad traffic with the U.S. Security is as much a concern to us, as it is to BLET. We do not simply give lip service to those concerns. We form part of various AAR, Homeland Security, Transportation Security Administration, and FDA committees that specifically address security measures. In addition, we regularly participate or cooperate in covert security operations with certain U.S. government agencies, which address security concerns in as discrete a manner as they deem necessary.

2. TFM Responses to Comments of Mr. Richard A. Johnson – BRC & IBEW.

Page 3, paragraph 2 – We take exception to Mr. Johnson's suggestion that the waiver will permit trains to operate in the United States with only a Class III transfer train test. That is not what is proposed in the waiver. Trains operating under the waiver will have a full Class I inspection performed by TFM employees in Mexico. Our employees are already performing Class I inspections on the ZMXYC trains and do so with the expertise of any North American car inspector.

Page 5, paragraph 1 – Mr. Johnson's statements that our employees receive only introductory courses from the National Academy of Railroad Sciences (NARS) simply serves to show Mr. Johnson's total lack of knowledge with regard to our operations. New Mechanical Department employees receive introductory courses, as part of their required training, by way of NARS, Progress Rail Services or other training institutions. However, most of our Mechanical Department employees are well seasoned employees with many years of service. In the Laredo/Nuevo Laredo area, most of our Mechanical Department employees average over 15 years of service, having worked for the former FNM or other mechanical department service providers, such as Progress Rail Services. In some cases, we have employees with over forty (40) years of experience, which hardly makes them apprentices. Furthermore, without getting into the details involving our Mechanical Department collective bargaining agreements in Mexico, we can assure FRA that no new hire employee will go directly

into a journeyman car inspector's position, unless he completes years of training as an apprentice. The training ITTSG, NARS, BNSF, and UP most recently assisted us in providing our Mechanical Department employees, was refresher training that was required under 49 CFR Part 232. No employee was an apprentice level employee.

Page 5, paragraph 2 – Mr. Johnson's concerns regarding 49 CFR 174.9 are once again an example of his lack of familiarity with our company and our training programs, as well as the hazardous material federal regulations of Mexico, which happen to be much more restrictive than those of the U.S. Per capita, TFM has more highly trained hazardous materials personnel than any other railroad in North America that we know of. Almost 100% of all of our field supervisors are trained at an Operations, Technical, Specialist, Site Commander, or Tank Car Specialist level. For the most part, this training is provided by way of TTCI and the BOE, who have set up operations at our training facilities in San Luis Potosi, SLP in 2000. In addition to the job specific training that our personnel receive, all departments participate in additional training programs that are provided by way of our association with FRA (joint inspections at the border), AAR, TTCI, BOE, UP, BNSF, DGAC, DuPont, Celanese, Rohm & Haas Bristol, and PROFEPA, just to mention a few. Mexican law requires that our employees be provided approximately 60 hours of training per year. Hazardous material training is part of the training that they receive on a yearly basis. Furthermore, due to the strict manner in which the Mexican government regulatory agencies oversee hazardous material and environmental issues, most of our Mechanical Department supervisors head up the local hazardous material and environmental teams in the terminal or district they are assigned to, making them even more aware of the hazardous material and environmental concerns and expectations of TFM.

Page 6, paragraph 2 – Mr. Johnson's statement that the waiver is "silent" about compliance with 49 CFR 232.109 (notice to engineer of dynamic brake status) is simply wrong. TFM will provide this notification on the dual language form shown at Tab 15 of the waiver petition.

Page 6, paragraph 3 – Mr. Johnson's concerns regarding record keeping and Tex Mex Railway's unwillingness to keep TFM records on UP traffic were addressed at the hearing. The records will be available to FRA in the United States, either at UP's offices in San Antonio or at another U.S. location acceptable to FRA.

Page 7, paragraph 4 – Mr. Johnson is obviously out of touch with the position the Mexican SCT (FRA's Mexican counterpart) has taken with regard to this initiative and their support of same. The SCT has stated time and again that they fully support the initiative and welcome FRA and its inspectors. In fact, the only thing the SCT has requested is that the inspections be reciprocal, in order that their inspectors may participate in much the same manner as we currently do when we conduct hazardous material joint inspections on both sides of the U.S./ Mexico border, in the company of FRA, SCT, and TFM personnel.

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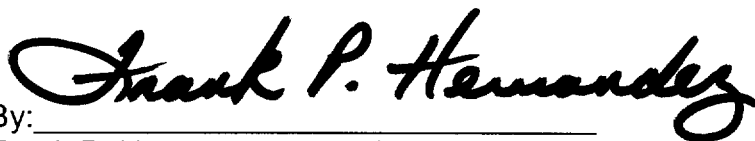
We would also like to share with FRA, the following information: Since the privatization of the Mexican railroad industry in 1996, we have had in place at TFM, a highly experienced team of U.S. railroad executives that has played a major role in implementing a U.S. type operational mentality, with regard to safety and efficient railroad operations. We are shocked by some of the comments that some individuals have expressed about Mexico and our operations. Specifically, we refer to safety and the fact that some individuals wrongly believe that TFM is less concerned with safety and security than they are. We are concerned about safety as anyone and our statistics prove it.

On many occasions, I have mentioned the fact that TFM is not the former FNM. While that is certainly true, it is also true that the majority of our employees are former FNM personnel. However, today those same individuals work under a corporate mentality that is totally different than the one that existed prior to our takeover of operations. The same individuals who formerly worked for FNM are now our employees and are also the key players who have turned our company into one of the safest and most profitable railroads in the history of the industry.

In closing we respectfully request FRA to look favorably upon this waiver request and to afford us the opportunity to demonstrate the quality of our operating practices. This initiative is absolutely critical to the continued economic growth between the U.S. and Mexico and will have positive, far reaching effects. We have an opportunity to be a part of history in the making.

Respectfully submitted,

TRANSPORTATION FERROVIARIA
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